

Art Unit: 1615



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/990,628

Filing Date: November 13, 2001

Appellant(s): REAM ET AL.

Robert Barrett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/3/08 appealing from the Office action mailed 10/31/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

This appeal involves claims 9-26.

Claims 1-8 and 27-34 are withdrawn from consideration as not directed to the elected invention.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

This appeal involves claims 9-26.

Claims 1-8 and 27-34 are withdrawn from consideration as not directed to the elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,317, 838	CHERUKURI et al.	3-1982
WO 99/44436	STAHL	9-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 9-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patent 4,317,838('838) and WO 99/44436 ('436).

Patent '838 teaches method for applying coating to chewing gum. See the abstract, see col.2, lines 35-68, wherein the patent teaches coating syrup using sweeteners or bulking agents. This is same as claimed taste masking agent. Patent at col.2, lines 40-55 teaches that sweeteners to be coated using various ingredients. This range disclosed in the patent for coating meets the

claimed requirement of "coating comprising at least 50% of the chewing gum product". Patent at col.5, lines 10-19 teaches claimed high-intensity sweeteners. Patent at col.5, lines 6-8 teach that the high-intensity sweetener can be present in the gum base or in the coating. Patent at col.5, lines 29-31 teaches gum base and the amount present by weight. Patent at col.5, lines 55-60 suggests, "in addition to chewing gum, the comestibles to be coated may include... other dosage forms for medicinal or therapeutic use". Medicinal are same as medicaments. Thus patent clearly suggests to one of ordinary skill in the art that coating can also include medicaments. The difference between the patent and the instant application is patent does not have medicament in the coating along with sweetener. However, WO '436 teaches coated chewing gum comprising a core of chewing gum and a coating comprising a coating material and one or more active substances. See the abstract, see page 1 under "technical field", see also page 2. WO document at page 3, last paragraph teaches active ingredients, which can be sweeteners. WO document at page 8, lines 15-17 teaches claimed high-intensity sweeteners. See also page 8, lines 20-24 wherein WO document teaches that along with active substances other functional groups can also be incorporated. These functional groups include vitamins and nutrients along with various pharmaceuticals, which are described at paragraph bridging pages 9-10. WO document at page 12 first paragraph teaches that the coating suspension comprise aqueous solution of xylitol, maltitol, isomalt, aspartame, acesulfame K and saccharin. These ingredients are claimed as taste masking agent.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to make to prepare gum base (gum center) and coat the gum base using taste masking agent and high intensity sweetener taught by patent '838 and include in the coating

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medicament taught by WO '436 in analogous coated chewing gum preparations. The idea of adding medicament into the coating flows logically from the art since one prior art teaches chewing gum coating using taste masking agent and high intensity sweetener and another prior art teaches chewing gum coating using active substances (high intensity sweetener), functional substances (medicaments) or sugar or sugar alcohols (taste masking agent). One of ordinary skill in the art would be motivated to coat the gum center with a medicament along with taste masking agent with the reasonable expectation of success that having medicament in the coating provides a better stability of the active substance (medicament) and increased effect thereof in all chewing phases. This is a prima facie case of obviousness.

(10) Response to Argument

Applicants' argue that patent '838 is directed to a so-called "one step" or "one syrup" method for providing a sugarless coating on a solid center, which includes applying alternating layers of coating syrup and dusting mix (column 2, lines 14-30) and as a result, rather than teaching overall coating levels, patent emphasizes the components of the coating syrup and dusting mix as well as specific ingredient percentages within the coating syrup and dusting mix (column 2, lines 40-55 and column 3, line 51 to column 4, line 4) and none of the weight percentages disclosed teach a coating comprising at least 50% by weight of the overall product, as required, in part, by Claims 9 and 18 and WO also fails to disclose or suggest a coating comprising at least 50% by weight of the product as required, in part, by independent Claims 9

and 18, instead, the Examiner relies upon WO for arguably teaching a medicament in the coating along with a sweetener, an element the Office Action admits patent lacks.

In response to the above argument, patent at col.4, ll 12-15 teaches that single deposition of each of the coating syrup and dusting mix may not be sufficient to provide the desired amount of thickness of coating deposited on the comestible and at col.4, ll 29-34 that application of 10-12 coats of coating syrup and 7-9 coats of dusting mix are required to comprise about 35 % by weight of coated chewing gum tablet and WO document also teaches coating the chewing gum with a coating material and active substances. WO document at page 3, ll 1-14 teaches that repeated applications of coating suspension on to the cores of the chewing gum are also in a manner known per se and at page 3, last paragraph clearly teaches that coating process may be repeated as many times as need in order to obtain the desired thickness of coating. One of ordinary skill in the art would modify the coating level from 35 % of patent '438 to "at least 50% by weight of coating" since WO document clearly teaches that coating process may be repeated to obtain the desired thickness and WO document also teaches that the presence of the active substance in the coating of the coated chewing gum provides a fast on set of the effect, better stability of the active substance and increased effect thereof in all chewing phases. Both the references clearly teach to one skilled in the art that in order to obtain the desired thickness of coating the coating process has to be repeated. Known work in the field of endeavor may prompt variations of the references from 35% of coating to 50% of by weight of coating for use in the same field and the incentive in the market place, which is increased effect of the active substance, would have been predictable to one of ordinary skill in the art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/JYOTHSNA A VENKAT /

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